

BEFORE THE FEDERAL ELECTION COMMISSION

American Democracy Legal Fund  
455 Massachusetts Avenue, NW  
Washington, DC 20001

Complainant,

v.

Todd Rokita  
c/o Hoosiers for Rokita  
5802 Oak Avenue  
Indianapolis, IN 46219-7219

Respondent.

**MUR# 7264**

OFFICE OF GENERAL  
COUNSEL

2017 JUN 11 AM 10:34

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FEDERAL ELECTION  
COMMISSION

**COMPLAINT**

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Congressman Todd Rokita (“Rep. Rokita”) for violating the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (“FEC” or “Commission”) regulations. Based on his public statements and actions, Rep. Rokita has moved beyond “testing the waters” for a possible run for United States Senate to become a “candidate” under the Act and violated the candidate registration and reporting requirements of the Act, 52 U.S.C. § 30101, *et seq.*, and Commission regulations.

**1. FACTUAL BACKGROUND**

On February 5, 2017, Rep. Rokita posted an article to his campaign website entitled “Indiana’s U.S. Senate Race Quickly Heats Up” that discusses his run for United States Senate.<sup>1</sup> A day later, the Commission sent Rep. Rokita a letter stating that Hoosiers for Rokita, formerly his principal campaign committee, continues to accept campaign contributions that appear to be

<sup>1</sup> “Indiana’s U.S. Senate Race Quickly Heats Up”, Hoosiers for Rokita, <http://www.toddrokita.com/posts/news/looking-ahead-2018-senate-race> (last accessed June 19, 2017).

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for a 2018 election, but Rep. Rokita has not filed a Statement of Candidacy for *any* federal office, whether for Congress or the Senate. The Commission gave Rep. Rokita 35 days to declare that he is either not a candidate or to file a Statement of Candidacy.<sup>2</sup> Four months has passed with no response from Rep. Rokita, yet he has continued to discuss his Senate candidacy in the public sphere.

On or around April 20, 2017, Rep. Rokita stated "I'm definitely the best candidate against [U.S. Senator from Indiana] Joe Donnelly."<sup>3</sup> Rep. Rokita has added a well-known Republican fundraiser and former politician, Dan Dumezich, to serve as the Chairman of his Statewide Campaign Finance Committee.<sup>4</sup> Of Dumezich, Rep. Rokita stated "[t]here is no better political fundraiser in Indiana."<sup>5</sup> Of Rep. Rokita, Duzemich stated "[w]ith a track record of fighting hard and winning statewide, a real conservative record of accomplishment and over \$1.5 million already in the bank, Todd is putting together the finance team needed, if he decides to enter the Senate race, to win the Republican nomination and defeat Joe Donnelly."<sup>6</sup>

Furthermore, Rep. Rokita has been amassing a large amount of funds in recent months. Rep. Rokita's campaign recently announced that it has raised more than \$300,000 in contributions during the first quarter of this year and has more than \$1.5 million in cash on hand, the very same fundraising prowess that Duzemich praised.<sup>7</sup> Reports have stated that Rep. Rokita's "campaign still wants to make sure he posts an impressive quarter – with a strong

<sup>2</sup> Disavowal Letter to Rep. Rokita, Federal Election Commission, Feb. 6, 2017.

<http://docquery.fec.gov/pdf/061/201702060300077061/201702060300077061.pdf> (last accessed June 20, 2017).

<sup>3</sup> "Rokita Makes His Case for GOP Senate", Howey Politics Indiana V.22, No. 32, Apr. 20, 2017, <http://howeypolitics.com/Files/HPI170420.pdf>.

<sup>4</sup> Dan Carden, "Region Republican to Play Key Role in Rokita's Expected U.S. Senate Bid", Northwest India Times, May 9, 2017, [http://www.nwitimes.com/news/local/govt-and-politics/elections/region-republican-to-play-key-role-in-rokita-s-expected/article\\_bd6eae03-360b-5ded-98b7-bd9c5e30e607.html](http://www.nwitimes.com/news/local/govt-and-politics/elections/region-republican-to-play-key-role-in-rokita-s-expected/article_bd6eae03-360b-5ded-98b7-bd9c5e30e607.html).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; see also Hoosiers for Rokita, Inc., Financial Summary, Federal Election Commission, <https://www.fec.gov/data/committee/C00476192/?tab=summary> (last accessed June 19, 2017).

showing from Hoosier donors – before announcing.”<sup>8</sup> At the end of May, Rep. Rokita stated that an “official decision” on whether he will run for Senate will come “in the next couple months,” despite posting an article about his candidacy in early February.<sup>9</sup>

## II. LEGAL ANALYSIS

The facts lead to only one conclusion: Rep. Rokita is a candidate for the United States Senate, despite his failure to file *any* Statement of Candidacy with the Commission for a 2018 election. The term “candidate” is defined in the Act to mean “an individual who seeks nomination for election, or election to Federal office” and for purposes of the statutory definition, an individual is deemed to seek nomination for election, or election, “if such individual has received contributions aggregating in excess of \$5,000.”<sup>10</sup> Although an individual may raise or spend more than \$5000 on “testing-the-waters” activity without becoming a candidate, the testing-the-waters exemption does not apply “to individuals who have decided to become candidate.”<sup>11</sup> Not only has Rep. Rokita raised more than \$5,000, but he continues to discuss his Senate candidacy.

The Commission has explained that the testing-the water regulation distinguishes “activities directed to an evaluation of the feasibility of one’s candidacy . . . from conduct signifying that a private decision to become a candidate has been made.”<sup>12</sup> The Commission’s regulations offer five examples of activities that indicate that an individual has decided to become a candidate, and Rep. Rokita easily satisfies four of the five: “(1) The individual uses

<sup>8</sup> Simon Pathé, “Why House Members Aren’t Rushing to Announce for Senate,” Roll Call, <http://www.rollcall.com/news/politics/campaign-cash-house-senate>.

<sup>9</sup> “Television Ads Hint at What’s to Come for Indiana’s 2018 U.S. Senate Race”, CBS 4 Indy, <http://cbs4indy.com/2017/05/31/television-ads-hint-at-whats-to-come-for-indianas-2018-u-s-senate-race/>.

<sup>10</sup> 52 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3(a).

<sup>11</sup> 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>12</sup> Adv. Op. 2015-09 (Senate Majority PAC & House Majority PAC) at 5 (citing Adv. Op. 1981-32 (Askew) at 4).

general public political advertising to publicize his or her intention to campaign for Federal office. (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate. (3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office. (4) The individual conducts activities . . . over a protracted period of time.”<sup>13</sup>

By posting an article to his campaign that highlights his candidacy for United States Senate back in early February, Rep. Rokita and his campaign used general public advertising to support his Senate candidacy. Additionally, his current fundraising amounts would be outsized for exploratory purposes only or for a congressman seeking re-election in a safe Republican district where he would not likely face a primary challenger. There would be no need to show an “impressive quarter” for a non-competitive seat that Rep. Rokita already holds. Lastly, that he has such a prominent chairman for his Statewide Campaign Finance Committee—a committee that exists solely for the purposes of running for *statewide*, and not a district-based office—only further indicates that Rep. Rokita has already decided to run for United States Senate. That same chairman has made comments about Rep. Rokita’s statewide political and fundraising prowess.

Most importantly, Rep. Rokita declared that he is the best candidate to defeat current United States Senator Joe Donnelly of Indiana. If an individual or someone acting on behalf of an individual makes or authorizes such statements, the statements would generally reflect the individual’s decision to become a candidate, thereby triggering candidacy and registration and reporting requirements.<sup>14</sup> The statements and actions of Rep. Rokita, Rep. Rokita’s campaign, and the chairman of Rep. Rokita’s Statewide Campaign Finance Committee reflect that Rep.

<sup>13</sup> 11 C.F.R. §§ 100.72(b); 100.131(b)(3).

<sup>14</sup> Adv. Op. 2015-09 (Senate Majority PAC & House Majority PAC) at 6 (citing Factual and Legal Analysis at 4-8, MUR 5363 (Sharpton)).

Rokita has already decided to run for office. Mere assertions that the individual's subjective intent differs from his or her statement or authorized statements made on his behalf "generally will not negate the objective indication of candidacy arising from the statement."<sup>15</sup>

In early February, Rep. Rokita posted an article to his campaign website about his candidacy for the United States Senate. It is now June, yet Rep. Rokita has still not formally declared himself a candidate. Despite his delay tactics, Rep. Rokita's candidacy is self-evident. The law requires that no later than 15 days after becoming a candidate, a candidate for federal office must "designate in writing a political committee . . . to serve as the principal campaign committee of such candidate" by filing a Statement of Candidacy using the Commission's Form 2.<sup>16</sup> Such a committee must file a statement of organization no later than 10 days after designation as the candidate's authorized principal campaign committee.<sup>17</sup> The treasurer of a political committee must file reports of receipts and disbursements.<sup>18</sup> Although he has triggered candidacy status, as the Commission has noted, Rep. Rokita has failed to File Form 2. He continues to skirt campaign finance laws, which encourages others to do the same. He had made light of the Commission's letter that he either declare he is not a candidate or file Form 2. Rep. Rokita cannot publicly perform and fundraise as a candidate for the United States Senate and simultaneously refuse to let the Commission know whether or not he is a candidate. The public relies on the Commission to disseminate information regarding federal candidates, a task that becomes impossible when candidates—sitting federal officeholders nonetheless—disregard the law.

<sup>15</sup> Adv. Op. 2015-09 (Senate Majority PAC & House Majority PAC) at 6.

<sup>16</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1.

<sup>17</sup> 52 U.S.C. § 30103.

<sup>18</sup> 52 U.S.C. § 30104.

**III. CONCLUSION**

As we have shown, Respondent has violated the Federal Election Campaign Act and continues to flout orders of the Commission. We respectfully request the Commission to investigate this likely violation, including whether it is knowing and willful. Should the Commission determine that Respondent have violated the Act, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

*Prof. Wood*

SUBSCRIBED AND SWORN to before me this 27 day of June, 2017.

*Kristen VaPuro*  
Notary Public

My Commission Expires: 11-30-2021

